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where it appeared that plaintiff had always had complete possession and the profits.

[Ed. Note.—For other cases, see Husband and Wife, Cent. Dig. §§ 774-782; Dec. Dig. § 210.\* 7 Va.-W. Va. Enc. Dig. 231.]

**8. Husband and Wife (§ 210\*)—Ejectment by Wife.**—Code, § 2742, declares that “the payment of the whole sum \* \* \* which any deed of trust may have been made to secure \* \* \* shall prevent the grantee, or his heirs, from recovering at law by virtue of such \* \* \* deed of trust, property thereby conveyed, wherever the defendant would in equity be entitled to a decree revesting the legal title in him, without condition.” Held, that where a husband and wife conveyed the wife's land to a trustee to secure a debt, and on discharge of the debt the trustee and creditor conveyed to the husband, it did not vest title in him so as to preclude the wife from maintaining ejectment.

[Ed. Note.—For other cases, see Husband and Wife, Dec. Dig. § 210.\* 7 Va.-W. Va. Enc. Dig. 231.]

**9. Ejectment (§ 19\*)—Possession of Defendant.**—Where, at the institution of ejectment, the land was not in the actual possession of any one, but defendant had had the land surveyed and paid taxes on it, the action could be maintained under Code, § 2726, providing that, if there be no person actually occupying the premises adversely to the plaintiff, the action must be against some person exercising ownership thereon or claiming title thereto, or some interest therein, at the commencement of suit.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. §§ 65-73; Dec. Dig. § 19.\* 4 Va.-W. Va. Enc. Dig. 891.]

Error to Circuit Court, Campbell County.

Action by E. G. Rives against the Lynchburg Cotton Mills. Judgment for plaintiff, and defendant brings error. Affirmed. (Keith, P., absent.)

*Harrison & Long and Geo. E. Caskie*, for plaintiff in error.  
*Samuel A. Anderson*, for defendant in error.

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COLEMAN *v.* VIRGINIA STAVE & HEADING CO. et al.

March 9, 1911.

[70 S. E. 545.]

**1. Dower (§ 101\*)—Sale of Land for Assignment—Grounds.**—Until a widow has dower assigned to her, she does not hold any part of her husband's estate as tenant in dower, and hence cannot have

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

her interest sold under Code 1904, § 2436a, authorizing a sale of real estate when held by a tenant by the curtesy or in dower.

[Ed. Note.—For other cases, see Dower, Cent. Dig. § 348; Dec. Dig. § 101.\* 4 Va.-W. Va. Enc. Dig. 788, 790.]

**2. Infants (§ 37\*)—Property—Jurisdiction of Court of Equity.—**

A court of equity, in its general power as a guardian of infants, may not sell their real property either for reinvestment or for their maintenance and education.

[Ed. Note.—For other cases, see Infants, Cent. Dig. §§ 82, 83, 97; Dec. Dig. § 37.\* 7 Va.-W. Va. Enc. Dig. 487.]

**3. Infants (§ 39\*)—Property—Statutory Provision—Evidence—Affidavits.—**

Where the property of an infant is sold either under the provisions of Code 1904, § 2609, or section 2616, affidavits showing that such a sale is for the advantage of the infant were not admissible in evidence, for section 2619 declares that not even a deposition may be read in a suit against an infant, unless taken in the presence of the guardian ad litem or upon interrogatories agreed upon by him.

[Ed. Note.—For other cases, see Infants, Cent. Dig. § 85; Dec. Dig. § 39.\* 7 Va.-W. Va. Enc. Dig. 492.]

**4. Infants (§ 39\*)—Property—Sales—Statutory Provisions—Substantial Compliance.—**

Where the timber on land belonging to an infant was sold under Code 1904, § 2609, or section 2616, respectively, providing that an infant's real property may be sold for his maintenance, or that the timber thereon may be sold when beneficial to his interest, and the petition wholly failed to allege what other property was owned by the infant, and there was no evidence tending to show that the sale would benefit him, or was necessary for his maintenance and education, all of which were required by the direct provisions of the statutes, the sale was void.

[Ed. Note.—For other cases, see Infants, Cent. Dig. § 87; Dec. Dig. § 39.\* 7 Va.-W. Va. Enc. Dig. 487, 496.]

**5. Courts (§ 21\*)—Jurisdiction—Statutory Provisions—Substantial Compliance.—**

Where a court is given jurisdiction by statute, and the mode of acquiring and exercising it is prescribed by statute, a substantial compliance is necessary to give the proceedings validity.

[Ed. Note.—For other cases, see Courts, Cent. Dig. §§ 69-74, 129-133; Dec. Dig. § 21.\* 7 Va.-W. Va. Enc. Dig. 847, 867.]

**6. Judicial Sales (§ 50\*)—Construction—Validity.—**Sound public policy requires that judicial sales should be sustained as far as consistent with the rights of others; innocent purchasers being favorites of the law.

[Ed. Note.—For other cases, see Judicial Sales, Cent. Dig. §§ 90-94; Dec. Dig. § 50.\* 8 Va.-W. Va. Enc. Dig. 826.]

**7. Infants (§ 37\*)—Conveyances—Sales.—**Infants are not only in-

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capable of conveying their realty, but are incompetent to consent to any proceeding provided for its conveyance, and in such cases they stand as hostile parties objecting to every step.

[Ed. Note.—For other cases, see Infants, Cent. Dig. § 82; Dec. Dig. § 37.\* 7 Va.-W. Va. Enc. Dig. 466.]

**8. Infants (§ 41\*)—Property—Judicial Sales.**—A purchaser of an infant's property at a judicial sale cannot be defeated because matters shown by the record are not true; but he is required to see that the proceedings giving the court jurisdiction were regular, for he is presumed to know that the infant may after his majority show cause against such a decree of sale, either for errors in the record, or that the court had no jurisdiction of the proceedings, or that they were irregular and not binding, or that the record did not warrant the decree made.

[Ed. Note.—For other cases, see Infants, Cent. Dig. § 92; Dec. Dig. § 41.\* 7 Va.-W. Va. Enc. Dig. 496, 503.]

Appeal from Circuit Court, Nottoway County.

Action by Mary T. Coleman and by her husband, I. N. Coleman, as her next friend, against P. T. Winn and others, co-partners, trading as the Virginia Stave & Heading Company, and others. From a judgment for defendants, plaintiff appeals. Reversed.

(Cardwell, J., absent.)

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BRIGGS et al. v. WATKINS et al.

March 9, 1911.

[70 S. E. 551.]

**1. Logs and Logging (§ 3\*)—Rescission of Contract—Grounds—Mutual Mistake.**—If complainants believed they were buying from defendants, and defendants believed they were selling, the standing timber upon 1,800 acres of swamp land, when the timber actually conveyed was only that on about 1,390 acres of the land, that on the remaining land being of little value, and the land being occupied and claimed by others, the contract was based on a mutual mistake of fact so as to authorize its rescission in equity on that ground, especially where the parties could be placed in statu quo.

[Ed. Note.—For other cases, see Logs and Logging, Dec. Dig. § 3.\* 11 Va.-W. Va. Enc. Dig. 888.]

**2. Contracts (§ 93\*)—Validity—"Mistake."**—The "mistake" from which equity will relieve may be common to both parties to the contract and consist in either the expression of their agreement or

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.